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Popular Punitiveness? Punishment and Attitudes to Law in Post-Soviet Georgia

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Abstract

Georgia is the only country in the post-Soviet region where incarceration rates significantly grew in the 2000s. In 2013, the prison population was halved through a mass amnesty. Did this punitiveness and its sudden relaxation after 2012 impact attitudes to the law? We find that these attitudes remained negative regardless of levels of punitiveness. Furthermore, the outcomes of sentencing may be less important than procedures leading to sentencing. Procedural justice during both punitiveness and liberalisation was not assured. This may explain the persistence of negative attitudes to law. The Georgian case shows that politically-driven punitive turns or mass amnesties are unlikely to solve the problem of legal nihilism in the region.

LAW-BREAKING WAS A MAJOR ISSUE THAT PREOCCUPIED SCHOLARS of the former Soviet Union directly after the Soviet collapse (Lotspeich 1995; Frisby 1998; Chervyakov *et al.* 2002; Galeotti 2002; Karstedt 2003; Kim & Pridemore 2006). Significant increases in many forms of crime were reported throughout the 1990s in the post-Soviet space (Zvekic 1998). Yet, throughout the 2000s, the most egregious forms of violent criminal activity—homicide, violent assault—and the prevalence of organised crime appeared to decline across the former Soviet Union, and in Russia and the Baltic states more specifically. In these

countries, decline in violent criminal activity occurred without the emergence of an overt politics of crime. In other words, crime control did not become a fixating object of government intervention, a contentious electoral issue or a means for governing a wide array of social problems (Garland 2001; Simon 2007). There was also no ‘punitive turn’ in response to the crime issue, as incarceration rates declined across the entire post-Soviet region from their level in 2000.

Post-Soviet Georgia represents one exception to this general trend. A punitive shift, framed in terms of ‘zero tolerance’, clearly emerged in 2004 following the Rose Revolution and the rise to power of the United National Movement (*Ertiani Natsionaluri Modzraoba*—UNM) under Mikheil Saakashvili. Georgia was alone in the post-Soviet region in joining many Western countries in a trend, noticeable since the 1990s, of what has been described as ‘the new punitiveness’ (Pratt *et al.* 2013; Baker & Roberts 2013). This punitive turn is most straightforwardly measured by the increase in incarceration by 300% between 2003 and 2010, remaining high (within the top ten in the world *per capita*) until the UNM left power in 2012, despite post-2009 efforts at liberalisation of the system (Slade 2012, 2013).¹ During this punitive turn, crime also rapidly decreased. Victimisation surveys from 2010 and 2011 show that Georgia had become an incredibly safe place to live in international comparison (GORBI 2011). During this time, Saakashvili described Georgia as a ‘laboratory for reform’ in which a ‘mental revolution’ had taken place regarding attitudes to the state.² Following the UNM’s departure from government in 2012, punitiveness was significantly decreased. The new incoming Georgian Dream (*Kartuli Otsneba*) coalition almost halved the prison population within a few months and sentencing policies were liberalised.

The goal of this article is to understand how these turns towards and away from punitiveness impacted on Georgian attitudes to the law and law-abidingness. We first discuss the literature on legal nihilism, zero tolerance and punitiveness and introduce the Georgian case in more detail. We then investigate three theoretical propositions derived from the literature. The first proposition hypothesises that zero tolerance improves attitudes to law by reducing discretion, signalling the credibility of law enforcement, and inducing respect for the supremacy of the law through uncompromising sanctions for

¹ ‘World Prison Brief, Georgia’, International Centre for Prison Studies, 2010–2012, available at: http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=122, accessed 10 May 2011.

² *From Popular Revolutions to Effective Reforms: The Georgian Experience* (New York, NY, Brookings Institution, 2011).

all lawbreakers. The second, in turn, establishes that levels of punitiveness must chime with popular beliefs about acceptable punishment to affect positive feelings towards the law. This article will finally query whether direct experiences of criminal justice are indeed vital in shifting attitudes to the law.

In the Georgian case, we find little support for the first two propositions but more support for the third. We conclude that the Georgian case suggests that punitiveness is not a remedy for the legal nihilism of the post-Soviet region. However, leniency also appears to make little difference. Instead, Georgia's experience indicates the salience of the arguments for procedural justice, both in the everyday application of the law, and in the making of that law.

Legal nihilism and zero tolerance

During the 1990s and early 2000s, a particularly strong vein of scholarship identified legal culture in former Soviet countries as a potential source of criminal behaviour (Solomon 1997; Ledeneva 1998, 2006; Humphreys 2002; Galligan & Kurkchiyan 2003; Nethercott 2007). Essentially, negative attitudes to law facilitated activity that broke that law. These negative attitudes possibly emerged from historical disregard for formal rules emanating from an aloof state, which broke these rules with abandon, as well as low levels of legal literacy (Hendley 2000, 2012). Legal nihilism entered the policy lexicon as an obstacle to the rule of law and one root cause of pernicious phenomena from corruption to anti-social behaviour.

Hendley defines legal nihilism as 'a lack of respect for law' remarking that 'legal nihilists obey the law when convenient, and otherwise ignore it' (Hendley 2012, p. 150). A number of scholars have shown that legal nihilism is not as widespread as is often thought, at least in the case of Russia (Hendley 1999, 2000, 2012; Gibson 2003; Gans-Morse 2017). Yet, scholars of Georgia often characterised Georgian legal consciousness in terms of nihilism. For example, Nordin & Glonti (2006) argued that Georgians automatically resisted law in its various forms. Kukhianidze (2003, 2009) suggested that Georgians suffered from an acute form of 'alienated statehood', in which social norms always overcame any sense of obligation to state law. This alienation from the law seemingly followed from a historic disregard for the rule of law. In Soviet times, the Caucasus republics were regarded as particularly deviant (Law 1974; Friedgut 1976; Sampson 1987). Various estimates suggested that Georgia, proportionately to its size, had one of the biggest second economies in the Soviet Union (Grossman 1977, 1998; Feldbrugge 1989; Suny 1994; Alexeev & Pyle 2003).

Some scholars argued that this propensity for shadow economic activity was a result of cultural traits (Mars & Altman 1983). Beyond the legal alienation fostered by Soviet political theory that insisted that the rule of law was a bourgeois construction to mask class domination (Solomon 1978; Butler 1993), the pre-modern, familial networks of the largely agricultural Georgian economy framed exchange and social relationships outside of legal frameworks. Informal practices became even more prevalent in the ‘time of troubles’ of the early 1990s (Zurcher 2005). Informal institutions emerged as key mechanisms for economic survival and physical safety in the context of separatist conflicts and civil war (Round & Williams 2010; Kupatadze 2012). Eduard Shevardnadze, the former Soviet Foreign Minister and Georgian President from 1992–2003, managed to establish some political order in the mid-1990s but, in order to survive in power, had to rely on informal practices of cooptation and bargaining (Christophe 2004; Godson *et al.* 2004; Nodia 2005). Under Shevardnadze crime control was mainly confined to instrumentalising anti-corruption as a tool for political purposes, using it to punish political dissenters and blackmail potential rivals (Stefes 2006). By 2003, Georgia’s scores for control of corruption and citizen’s feelings of safety were abysmally low (Slade 2012). Survey data from 2003 and 2004 show that scores for trust in law enforcement were some of the lowest for any institutions (IRI 2003, 2004). Georgians, in other words, had no faith in the law.

The UNM came to power in 2004. An immediate goal of reform was to fight corruption and crime in the country. In late 2005 and early 2006, the UNM declared a policy of ‘zero tolerance’ that involved significant change to the criminal justice system (Slade 2012; Strakes 2013; Kupatadze 2016). ‘Zero tolerance’ has become a frequently used term around the world for ‘get tough’ policies (Bowling 1999; Bowling & Sheptycki 2012). It first referred to a policing strategy adopted in New York City in the 1990s (Greene 1999). This strategy had many tactical elements but its fundamental principle was quite simple. According to Willie Bratton, the author of the policy in New York, crime and disorder emerge from minor crimes and neglect being allowed to fester in communities; this was the central premise of ‘broken windows theory’ (Wilson & Kelling 1982). Thus, by targeting petty crime, the police can create an inhospitable environment for criminal and anti-social behaviour (Bratton 1997; Nelson *et al.* 1997; Greene 1999).

Saakashvili’s version of zero tolerance, declared in 2006, emboldened state agents to tackle criminals. Police were given extraordinary powers, such as the use of lethal force against those resisting arrest. Judges were directed to apply non-discretionary penalties. In Saakashvili’s own words: ‘I am

announcing a new draft law with zero tolerance for petty crimes There will be no probation sentences Everyone who commits these crimes will go to prison' (Slade *et al.* 2014, p. 12). These sentencing changes and more efficient police and prosecutors led to a marked increase in the prison population. Between 2003 and 2010 the number of prisoners grew from around 6,000 to 24,000 people; a 300% rise in seven years. By 2010, Georgia was in the top five incarcerators in the world *per capita* (Slade *et al.* 2014, p. 12). Thus, it is fair to describe Georgia's criminal justice between 2004 and 2012 as punitive. Punitiveness is a complex and abstract concept, yet it can be measured in a variety of ways. These include inflexibility in the application of the law, severity of deprivation suffered by those punished, or the simple probability of punishment for law-breaking (Lynch 1988). Despite these multifarious indicators, there is some agreement (Garland 2001; Frost 2006; Campbell 2015) that deprivation of freedom is inherent to state punitiveness in the present day. Thus, as Frost (2006) and others (Campbell 2015; Fondacaro & O'Toole 2015) argued, incarceration rates, while imperfect, give a relatively reliable proxy measure of a state's punitiveness for purposes of comparison.

On this measure, the Georgian state remained punitive throughout Saakashvili's time in office. Growing concern, domestically and internationally, surrounded the high levels of incarceration and police violence in the country at this time (Kupatadze 2012). In 2009, the government announced the 'liberalisation' of the criminal justice system. In this context, a new criminal procedural code promised to curb police excesses, diversion programmes and investment in probation and alternatives to imprisonment were made. During this time, however, incarceration rates only stabilised and the prison population remained one of the highest in the world proportionately. In addition to the 24,000-strong prison population, by 2012 the growing probation system surveilled a further 38,000 people. During this period of liberalisation there is evidence that torture persisted, and perhaps worsened, across the Georgian prison system (Slade *et al.* 2014).

Under zero tolerance, crime dramatically declined. By 2010, a person was twice as likely to be a victim of burglary, four times more likely to be robbed and ten times more likely to be assaulted in Germany than in Georgia.³ Walking at night in Georgia's cities became safe; surveys suggested that feelings of security improved significantly across the country (GORBI 2011; Slade 2012). Perceptions of corruption experienced a similar development. Transparency International's Corruption Perception

³ 'Criminology in Europe. Freiburg', European Society of Criminology, 2012, available at: <http://www.esc-eurocrim.org/newsletter/Dec12ESCnewsletter.pdf>, accessed 5 March 2015.

Index indicated that, outside the Baltic States, Georgia was now perceived as the least corrupt of all post-Soviet countries by its own citizens. It has even surpassed EU members such as Italy and Greece (Kukhianidze 2009; Kupatadze 2012; Slade 2012; Light 2014).

It would make sense to ascribe declines in crime and corruption to the probability of prosecution, the credibility of reformed law enforcement bodies, and the increased severity of punishment. However, the Saakashvili government and international observers advanced a further argument to explain these developments. In their views, positive legal consciousness can follow from punitiveness, as a strict application of tough sanctions for all law-breakers produces respect for the supremacy of the law and is a first step to shifting consciousness. Thus, Georgian interior minister, Ivane Merabishvili, suggested that the rule of law ‘needs to become entrenched tradition, recognised by Georgian society as a whole ... for the time being ... it is the government that is best equipped to administer justice’.⁴ The World Bank argued that Georgia’s fight against corruption successfully prioritised prosecutorial action over and above institution building. The adoption of ‘unconventional solutions’—that is, avoiding due process—and the implementation of strong-arm tactics to signal credibility were two important steps in creating legal order in Georgia (World Bank 2012).

Furthermore, Saakashvili and his team declared a ‘mental revolution’ during many speeches, including those delivered at the Brookings Institution in Washington, DC and in different appearances at the Council of Europe’s Parliamentary Assembly (Council of Europe 2013a).⁵ The phrase, ‘mental revolution’ was in fact borrowed from a positive analysis of Georgia’s reforms published in *The Economist* magazine.⁶ The essence of this shift in mentality is summed up by Saakashvili himself: ‘fundamental reforms and a mental revolution have changed Georgia In particular, as a result of the complete renovation of law enforcement bodies ... Georgians have stopped thinking of their country as

⁴ ‘Georgia’s Mental Revolution’, *The Economist*, 19 August 2008, available at: <http://www.economist.com/node/16847798>, accessed 5 March 2015.

⁵ ‘Saakashvili’s Address to the European Parliament. Transcript’, *Civil.ge*, 23 November 2010, available at: <http://www.civil.ge/eng/article.php?id=22883>, accessed 25 April 2015; *From Popular Revolutions to Effective Reforms: The Georgian Experience* (New York, NY, Brookings Institution, 2011).

⁶ ‘Georgia’s Mental Revolution’, *The Economist*, 19 August 2008, available at: <http://www.economist.com/node/16847798>, accessed 5 March 2015.

a post-Soviet state’.⁷ The term ‘mental revolution’ expresses renewed engagement with the state, active citizen participation, positive orientations to law and its institutional manifestations, and, ultimately, an end to passivity and fatalism.

In 2012, Georgian Dream won parliamentary elections, in part due to the public’s abhorrence at torture scandals revealed on social media in the burgeoning prison system (Menabde 2013). The new government sought to distance itself from its predecessor by relaxing zero tolerance and implementing an amnesty of those imprisoned under it. In late 2012 and early 2013, as a consequence, the country witnessed a wide-ranging release of prisoners, in which over 8,000 people were amnestied (MacKay 2016). By the end of 2013 Georgia had slipped back down to 63rd in the world in terms of the number of prisoners *per capita* (ICPR 2016). The new government claimed that this process was the state’s reaction to popular demands to end the harsh criminal justice policies of the Saakashvili government and to relegitimate the judiciary (Slade *et al.* 2014). According to Georgian Dream, zero tolerance had created further alienation from state law.

Criminological research (Roberts 2002; Roberts *et al.* 2003; Frost 2010; Campbell 2015) has approached variation in state punitiveness by focusing on the interaction between public demands, political agendas, and media campaigns. These arguments led to the emergence of a debate concerning ‘popular punitiveness’ (Campbell 2015, p. 180), intended here as the degree to which political turns towards or away from punitiveness are responses to pre-existing dispositions and fear of crime (Innes 2004) amongst the electorate itself. While certainly politically expedient, the Georgian Dream’s policy of leniency was framed as driven by the electorate and a democratic move that focused on legitimacy-building.

Thus, both the UNM and Georgian Dream intended to leave tangible imprints on the interactions between state punitiveness and attitudes to law in Georgia. For the UNM, zero tolerance can create positive legal consciousness—a ‘mental revolution’—through revealing the irresistible power of non-discretionary and efficient application of the law. For Georgian Dream, when leniency chimes more with popular preferences, policies that speak to those preferences can legitimate state law. This article seeks to investigate these two approaches. The differences in these approaches appear crucially important given continuing problems of high crime rates, corruption and nihilistic legal cultures in many post-Soviet

⁷ ‘Saakashvili’s Address to the European Parliament. Transcript’, *Civil.ge*, 23 November 2010, available at: <http://www.civil.ge/eng/article.php?id=22883>, accessed 25 April 2015.

countries. Saakashvili has declared ‘zero tolerance’ once more in his new role as governor of Odessa, Ukraine (Rekhviashvili 2015). Georgian criminal justice reforms have been examined by policy-makers from around the world and Georgian reformers employed from Ukraine to Kyrgyzstan (Rekhviashvili 2015; OSCE 2016).

The data examined here suggest that, ultimately, there is little to support either claim about the relationship between punitiveness and the legitimacy of law. In examining this relationship, we moved away from macro-level policies and political signals of punitiveness to micro-level interactions between citizens and the state in the field of criminal justice. When citizens experience procedural justice—defined as such goods as transparency, neutrality, voice and respect in their interactions with the law—legitimacy for its fundamental coercive force is nurtured (Tyler 1990; Sunshine & Tyler 2003). The outcome of the procedure, even if undesirable for an individual, will not negatively affect views of the law if those procedures are just. These propositions have been tested and supported in many jurisdictions, including the United Kingdom (Jackson *et al.* 2012a, 2012b; Singer 2013), Ghana (Tankebe 2008), Jamaica (Reisig & Lloyd 2009), Slovenia (Reisig *et al.* 2014), and South Africa (Bradford *et al.* 2014). These studies corroborate the hypothesis that citizens’ views of law are contingent upon procedural fairness, bringing about a moral sense of obligation to law-following. Finally, the article will ask what evidence there is for this in the case of Georgia and whether procedural (in)justice can help explain the persistence of the ‘negative myth of law’ (Kurkchian 2003) in the country.

Data

The data supporting the argument advanced in this article come from two rounds of opinion surveys completed in 2011 and 2014 respectively. As part of the Judicial Independence and Legal Empowerment Project (JILEP), under the auspices of the East West Management Institute (EWMI), the social research NGO Caucasus Research Resource Centers Georgia Office (CRRC) conducted polls of attitudes to the judiciary (EWMI 2011, 2014). This research included repeated nationally representative public opinion surveys as well as focus group discussions with three target groups: the general public, court users and legal professionals in Tbilisi, Batumi and Kutaisi, as well as qualitative and quantitative interviews and surveys with legal professionals and business representatives. Both surveys were conducted in exactly the same way by the same team and using the same measures. The study in 2014 intended to trace changes in the knowledge and attitudes towards Georgia’s justice system over a two-year period and, to this end,

used the same research design. The survey targeted all Georgian and Russian-speaking adults in Georgia, interviewing 3,814 people in 2014 and 4,308 in 2011 through the face-to-face PAPI (paper and pencil interviewing) method. The sampling was representative to Georgia, excluding the breakaway territories of Abkhazia and South Ossetia.

We were particularly interested in questions from the surveys and focus groups that centred their attention on trust in legal institutions. Moreover, we looked at questions of moral obligations to follow the law. In both rounds of the EWMI surveys, respondents are asked what constitutes being a good citizen.⁸ By implying a thin measure of ‘moral alignment’ with the law or ‘positive legal consciousness’, the questionnaire’s structure allowed for an imperfect measure of the degree to which respondents hold law-abidingness as important for civic ‘goodness’. In turn, it tested, rather basically, the relationships between interaction with criminal justice and a belief in law-following as an obligation. In what follows, we combined analyses of the survey and focus group data with other data sources, including those issued by the Georgian police, the Ministry of Corrections and other public opinion surveys. The latter include two victimisation surveys carried out on behalf of the Ministry of Justice in 2010 and 2011 (GORBI 2010, 2011), a survey on punitiveness by Penal Reform International,⁹ a 2014 survey of prisoners and ex-prisoners by Open Society Georgian Foundation (Slade *et al.* 2014), and voter opinion polls from various years conducted on behalf of international organisations.

Attitudes to law under zero tolerance

In post-independence Georgia, trust in the judiciary has been amongst the lowest of any institutions (IRI 2003; Stefes 2006; Slade 2013). Survey data preceding and following the 2005 announcement of zero tolerance showed that trust in the judiciary declined from an already relatively low level when Saakashvili came to power. In October 2004, a minority of respondents (44%) saw the court system favourably. By April 2006, this figure had declined to 34% and it spiralled down to 22% in September 2007 (see Figure 1; IRI 2004, 2006, 2007). A similar trend can be noted in public perceptions of

⁸ Respondents are presented with a list of eight options, and can choose only three. One option is ‘obey the law’. The others are: help the poor, do volunteer work, vote in elections, vote for the ruling party, follow traditions, participate in protests, and form opinions independently of others.

⁹ ‘Attitudes of Georgia’s population towards crime and penal policy’, Penal Reform International Regional Office in the South Caucasus (unpublished, 2009).

prosecutors: by 2011, the EWMI surveys showed that courts, judges and prosecutors were the least trusted institutions in Georgia.

[INSERT FIGURE ONE HERE]

The Georgian police represented the only exception to this negative picture. The police are easily the most trusted criminal justice institution: in 2011, 66% of respondents ‘completely trusted’ or ‘trusted’ the police, which had been completely overhauled between 2004 and 2006. The reforms involved a huge turnover of personnel, the creation of new divisions—including the community oriented Patrol Police—and the provision of new uniforms and technology (Kupatadze *et al.* 2007; Light 2014). Georgians reported high satisfaction in police performance by 2007 (IRI 2007).

Despite the high levels of trust reported in the police, Georgians display very low willingness to report crime (GORBI 2010, 2011), citing most frequently the police’s ineffectiveness in helping them as a reason not to turn to the police. This scepticism is complemented by observing that a further 11% of respondents identified fear of reprisals as a key reason for not turning to the police (GORBI 2011). This figure stands at less than 1% when analogous scores are averaged in international victimisation surveys conducted in EU states. This fear of reprisals suggests that traditional and informal understandings of conflict resolution, normative codes of honour and customary law compete with state law into the present day.

Saakashvili and the UNM were elected in the wake of an electoral corruption scandal. The electorate certainly demanded a fight against corruption and cleaner politics, including disentangling political elites from mafia bosses and reducing the power of local warlords (Areshidze 2007; Kupatadze 2012). It is not clear, however, that such demands extended to a zero tolerance approach to all types of crime. Polling data from 2003, 2004 and 2005, show that crime was not viewed as anywhere near as pressing an issue when compared to other colossal tasks faced by Georgia, and unemployment and separatism more in particular (IRI 2003, 2004, 2005). The zero tolerance policies concerning police powers and sentencing were rather executive-driven, emerging from the anti-corruption struggle (Tangiaashvili & Slade 2014). There seems to have been a degree of political expediency and ‘elite punitiveness’ that led to the adoption of zero tolerance (Beckett 1997; Slade 2013; Tangiaashvili & Slade 2014).

Survey data complements this interpretation. Punitiveness is not particularly popular amongst the Georgian population. Penal Reform International South Caucasus office (PRI) conducted a survey in 2009 that demonstrated that 54% of the population believed that punishments were too severe and unjust at that time. In contrast, around 32% respondents were in favour of strict punishment for offenders.¹⁰ The same survey showed that the majority of Georgians would like to see alternative sentences for minor crimes. Moreover, 69% thought that the prison population, the fourth largest in the world *per capita* at that time, was ‘too large’. Further evidence for a lack of popular punitiveness is offered by the 2011 EWMI Attitudes to the Judiciary Survey, which shows that most (65%) of people would like to see the circumstances of the individual taken into account during sentencing rather than the simple, strict application of the law. This preference, which increased to 69% in 2014, has to be seen as a straightforward rejection of the mandatory custodial sentencing principle where judges are given little discretion to take individual circumstances into account.

In sum, zero tolerance policies did not shift attitudes to the law either in the abstract or to specific legal institutions. In regard to the judiciary, these policies are correlated with a wider trend of declining trust. Low levels of willingness to report crime, moreover, offset gains in trust in the police. Finally, zero tolerance appeared to go against popular demand for greater leniency. When the Georgian Dream came to power in 2012, punitiveness was reduced in line with popular sentiment: did this shift relegate Georgia’s criminal justice system?

Popular leniency

The Georgian Dream’s mass amnesty, which released more than 8,000 prisoners in 2013 and early 2014, represented a direct response to ‘unpopular punitiveness’, inasmuch as it answered the protest against the criminal justice system that had affected the 2012 parliamentary election results. The amnesty can therefore be seen as not purely elite-driven. We now consider whether the dovetailing of levels of punitiveness with public sentiment coincided with improving measures of trust in law enforcement and obligations to follow the law.

Attitudes in 2014 showed little improvement from those registered in 2011. Around 41% of respondents in 2014 reported a slight improvement in criminal justice; 32%, on the other hand, claimed

¹⁰ ‘Attitudes of Georgia’s population towards crime and penal policy’, Penal Reform International Regional Office in the South Caucasus (unpublished, 2009, p. 11).

that, ultimately, the situation had not really evolved. There is also little change in results concerning the obligation to follow the law between 2011 and 2014: 55% of respondents believed innocent people are imprisoned ‘often’ or ‘occasionally’ in 2014, just as they did in 2011. We also registered an increase in the number of court users reporting that their experience in court had ended with a ‘completely illegitimate’ court ruling. As we discuss below, the analysis of both surveys ultimately unveiled significant linkages between these indicators and the feeling of duty to obey the law.

Focus group data from 2014 revealed that court users were mostly unconvinced as to whether Georgia’s courts had ultimately become more trustworthy. While a majority of respondents thought that nothing had ultimately changed, the data suggested the emergence of some complaints about the lack of turnover of staff in the Georgian court system. Indeed, during the mass amnesty in 2013 the same courts and judges reassessed sentences that they themselves had passed only recently, coming to different conclusions in most cases and hence reinforcing the notion that judges were impotent and subordinate to politics. Thus, trust in judges remained low—the third lowest ranked institution of any in both the 2011 and 2014 survey.

The amnesty in itself was a contentious procedure that was conducted under the auspices of the Ministry of Justice and the parliamentary Human Rights Committee. At first, a list was drawn up of political prisoners who were to be released prior to the mass reappraisal of cases of ordinary prisoners. The process for establishing this list created controversy amidst claims of political partisanship. Second, the review of cases of ordinary prisoners was done in a rushed manner, as thousands of cases were reappraised in just a couple of months. Third, prisoners were often unceremoniously removed from prison with no forewarning and no preparation for release. Longer-term reforms to sentencing and alternatives to prison took second stage to the amnesty. Procedurally then, even during this period of clemency and leniency, the justice system could be perceived as unjust (Dolidze 2013; Vartanyan 2013; Council of Europe 2013b).

To compound matters, post-amnesty signal crimes—those that elicit fear of crime and are interpreted as indicators of levels of risk regardless of how accurate this is (Innes 2004)—made the Georgian judiciary look even more incompetent. Two police officers were shot dead and another badly wounded in two separate incidents after the amnesty in 2013, while a series of high profile murders led to the impression that disorder was once again returning (Lomsadze 2015). Special police checks were set up in Tbilisi seemingly to tackle rising insecurity. Moreover, prison disturbances in 2014 were

allegedly resolved only with the help of Georgian mafia figures—so called ‘thieves-in-law’ (*kanonieri qurdebi*).¹¹ Notwithstanding moral panic about the mass amnesty, there is little official evidence that former prisoners turned to crime after release. According to a report of the Ministry of Corrections and Legal Assistance, 8,729 individuals were released from Georgian prisons on the basis of mass amnesty.¹² Only 523 (6.1%) of released individuals committed crimes in 2013 and only 423 (4.8%) committed crimes in the first ten months of 2014.¹³

Some indicators for the courts did improve in the 2014 survey. In 2011, 28% of respondents agreed or fully agreed with the idea that judges were independent in Georgia; by 2014, this figure had increased to 35%. This result is still problematic when we consider the role played by prosecutors. In 2014, trust in prosecutors remained incredibly low—only 16% ‘fully trust’ them. Focus group respondents, in both 2014 and 2011, noted that the judges are ‘puppets’ of the prosecutors. However, trust in courts did increase in the period in question. In 2014, 37% of respondents— up from 32% in 2011—said that they either ‘fully trust’ or ‘partially trust’ the courts. While this difference is statistically significant, and may have been caused in part by the mass amnesty and abandonment of zero tolerance, very low figures suggest that Georgia’s courts remained essentially non-trusted institutions, especially when compared to the patrol police, parliament, president, army or church.

Since the 2012 change of government, the police’s positive image has been declining. While attitudes towards the police remained relatively constant, the introduction of new police powers and the authorities’ efforts to downplay the positive outcomes of reforms by the previous government put police reputation under threat. The case of the stop and search powers introduced at the beginning of 2014 demonstrates this decline in police reputation. According to International Republican Institute polls, the introduction of these powers coincided with a decrease in the public confidence in the police. A survey from June–July 2012 shows that 88% of respondents viewed police work favourably. By February 2014

¹¹ ‘Inmate killed in Geguti prison; prison administration shrugs the incident off’, *Interpress News*, 5 March 2014, available at: www.interpressnews.ge/en/press-digest/55322-press-digest-05032014.html?ar=A, accessed 26 June 2017.

¹² ‘Statistical Review’, Ministry of Corrections and Legal Aid of Georgia, 2013, available at: <http://www.moc.gov.ge/ka/statistika/tsliuri-angarishi/article/21513-saqarthvelos-sasjelaghshrulebisa-daprobaciis-saministros-sistemis-statistikis-tsliuri-angarishi-2013-tseli> accessed 26 June 2017]

¹³ ‘Freedom of Information Request to Ministry of Corrections’, *Fact Check Georgia*, 27 November 2014, available at: <http://factcheck.ge/wp-content/uploads/2014/12/file0012.pdf>, accessed 5 March 2015.

however, survey data showed that the number of the respondents favourable to police work had decreased to 82%.¹⁴ National Democratic Institute (NDI) studies of public attitudes also reveal the same trend. In an August 2012 survey 58% of respondents believed the police were doing their job ‘very well’ or ‘well’ while in a similar survey from August 2014 this number had decreased to 40% (National Democratic Institute 2012, 2014).

These findings suggest that, *per se*, policies of punitiveness or leniency do not easily shift negative views of law enforcement and obligations to the law, regardless of how much those policies are derived from popular will. We now turn to a possible explanation for the entrenched and persistent nature of negative attitudes to the law and legal institutions. Drawing from the literature on procedural justice, we examine the data on how individual-level interactions with criminal justice relate to attitudes to the law. We suggest that macro-level signals of punitiveness or leniency, when not followed by fair and just procedures, are less important for promoting the rule of law than these micro-level interactions.

Procedural justice and trust

Direct experiences of criminal justice are vitally important for fostering legitimacy in the system (Tyler 1990; Jackson *et al.* 2012a, 2012b). When citizens experience neutral and transparent procedures, they are more likely to feel compliant towards the law, regardless of the particular outcome of those procedures. Data in the EWMI surveys show that direct experience of criminal justice in Georgia has regularly undermined legitimacy and a sense of obligation to law. We examine a number of cases, including those involving contact with the police and courts, where this proposition holds true. In this sense, we aim to highlight the issue of procedural justice through a discussion of the practice of plea-bargaining introduced in 2004. We argue that procedural justice has remained a serious problem during zero tolerance and after it, helping to explain the persistence of negative attitudes to law over time.

The survey data show that when people actually interact with the police or the courts satisfaction with these institutions declines (EWMI 2011, 2014). The survey data for 2011 show that amongst people who themselves or close friends or relatives had been to court in the last two years, the perceived legitimacy of the court decision was positively related with mentioning obeying the law as important for being a good citizen. This relationship held true in 2014 also: a greater percentage of those who viewed

¹⁴ ‘International Republican Institute (IRI) poll results on Georgia released *Agenda News*, 1 April 2014, available at: <http://agenda.ge/news/11621/eng> , accessed 5 March 2015.

the court ruling as legitimate also mentioned that it is important to obey the law (61% n=174). Only 45% (n=107) of those who saw their court decision as lacking legitimacy said that law-following was important; this was a statistically significant difference.¹⁵

Jackson *et al.* (2012a) and Singer (2013) note that the effect of suffering procedural injustices on attitudes to the law can occur through vicarious experiences of such injustices. That is to say, the direct criminal justice experiences of relatives and friends can also impact attitudes to law-following. In the Georgian context, we found a connection between the frequency with which people believe innocent people are sent to prison and their perception of obeying the law as a citizen's duty. In 2011, only 42% (n=429) of those who believed that innocent people were put in prison 'frequently' or 'very frequently' mentioned law-following as a duty of Georgian citizens. This figure stood at 62% (n=390) for those who believe innocents are 'rarely' or 'very rarely' put in prison.¹⁶ This relationship was present in the 2014 survey as well. Perceptions of the justice of opaque court processes and decisions then may have some effect on the strength of positive orientations towards law-abidingness. The practice of plea-bargaining stands out to demonstrate this latter point.

Plea-bargaining was introduced into the Georgian system in 2004 as one of the earliest changes to criminal justice procedure following the Rose Revolution (Transparency International 2010). Plea-bargaining became the dominant practice for resolving criminal cases. Due to a lack of judicial independence, and the Soviet legacy of a largely inquisitorial court procedure (Hammarberg 2013), cases tended to go to court only where there was overwhelming evidence that the prosecution will succeed. Acquittal rates in Georgia by 2010 stood at 0.1% (Transparency International 2010). Going to court, in this sense, meant being found guilty. Plea bargains as a consequence became a popular instrument for both the defence and prosecutors: the former relied on the practice for reasons of leniency; the latter, for reasons of efficiency. By 2012, 87% of cases ended with a plea. After 2012, the use of plea-bargaining did not decline, and it increased to 89% in 2013.¹⁷

Introduced in the United States during the nineteenth century, plea-bargaining arguably emerged as a means of state re-legitimation during periods of turmoil or following authoritarian rule

¹⁵ $\chi^2 = 7.1$, $df = 2$, $p < 0.03$.

¹⁶ The difference is statistically significant ($\chi^2 = 34.423$, $df = 4$, $p < 0.000$).

¹⁷ 'Statistics on Plea-Bargains 2010–2015', Supreme Court of Georgia, available at: <http://www.supremecourt.ge/statistics/>, accessed 15 May 2016.

(Vogel 1999, 2007). In principle, citizens are empowered and better able to control the judicial process through the offer of a plea. It is not clear what exactly motivated the adoption of plea-bargaining in Georgia and whether re-legitimation of the court process was a factor. Data from a range of sources show that it certainly did not re-legitimize the system, if that was ever the intention; the effect of plea-bargaining was quite the opposite.

In 2011, respondents identified the transfer of money to the state budget as the main purpose of plea-bargaining (see Figure 2). Since its very early days, plea-bargaining incorporated money transfers as one of its distinct elements. Business people were held in pre-trial detention and released for a payment into the state budget as part of a plea (Areshidze 2007; World Bank 2012). After the change of government in 2012, a freedom of information request revealed that over 140 million Georgian lari (US\$ 70 million) had been transferred into the state budget in the period 2009 to 2012 from plea bargain agreements alone (IDFI 2013).

Since 2012, there has been a progressive decline in the perception of plea-bargaining as a vehicle for extortion (see Figure 2). Yet, the notion that plea-bargaining is simply a mechanism for speeding up trials has maintained much of its currency (EWMI 2014), as Georgians continued to question whether plea-bargaining is in any way about increasing fairness or justice in the system. Given the prevalence of the practice, we may infer that personal or vicarious experiences of plea-bargaining do not increase a sense of obligation to the law. Since 2014, the use of plea-bargaining has declined to 64% of cases; this change, however, intervened too late to establish a correlation with changes to attitudes in the EWMI survey data.

[INSERT FIGURE 2 HERE]

More controversial evidence on the use of plea-bargaining and procedures in pre-trial detention comes from a survey of 1,199 prisoners and ex-prisoners conducted by Open Society Georgia Foundation in 2014 (Slade *et al.* 2014). This survey found widespread evidence of torture and inhuman treatment in prisons and remand facilities, and particularly at Gldani #8, a notorious pre-trial detention centre that has a capacity for 3,000 people. Respondents believed that one key reason for their torture was to produce confessions or force plea-bargains. Respondents further indicated that they knew significant numbers of people who did indeed provide plea bargains under duress. Almost half of respondents furthermore stated

they know ‘many’ individuals (defined as six or more in the survey) who, as a result of torture and inhuman treatment, had agreed to a plea bargain. Moreover, 15% of respondents claimed they had personally agreed to a plea bargain as a result of torture and inhuman treatment. Approximately every third respondent (35%) claimed to know ‘many’ individuals who, as a result of torture and inhuman treatment, had paid money or given up property to the state. Some 10% of respondents claimed they themselves had done this (Slade *et al.* 2014, pp. 48–9).

These results suggest that criminal justice procedures, from arrest through pre-trial detention to sentencing, were operated without due acknowledgement of the need for procedural justice. This practice did not change significantly after 2012, indicating that it is the lack of procedural justice, rather than radical shifts in punitiveness accompanied by political slogans, that drives negative feelings towards the law and criminal justice. Under zero tolerance, interactions with criminal justice actors became more likely. Such interactions could be often negative; their overall effect had therefore the potential to undermine positive beliefs about the law. After the policy of zero tolerance was relaxed, however, not enough was done to change criminal justice procedures, as confirmed by the contentious amnesty of 2013. The result has been that into the present day procedurally, Georgians still do not feel their system delivers justice, regardless of how punitive or lenient it is.

Conclusion

Georgia, uniquely in a post-Soviet region marked by a trend towards decreasing use of prison, took a punitive turn in the early 2000s. Similar to many Western countries and some developing ones, Georgian politics became punitive. This ‘politics of crime’ is familiar to other contexts, including the United States, the United Kingdom, Brazil, and South Africa (Garland 1996, 2001; Simon 2007; Super 2010; Melossi *et al.* 2011). Here, the ‘criminal question’ and the ‘spectacle of crime’ (Super 2010) mobilised governments to focus on law enforcement as a way of tackling wider social ills, often due to a mixture of electoral and cultural pressures and political expediencies (Campbell 2015). In the Georgian case, popular punitiveness towards corruption and organised crime in the Rose Revolution of 2003 morphed, around 2006, into elite punitiveness towards all forms of deviance. This change was framed in the internationalised slogan of ‘zero tolerance’. This process added in turn to the emergence of societal disillusionment that, from 2013 onwards, contributed to a change of government and a radical shift towards decarceration. Georgia has truly been, as Saakashvili put it, a ‘laboratory for reform’.

This article has examined a number of sources—crime surveys, opinion polls, and focus group data—to look at what has happened to attitudes to the law during these radical shifts in punitiveness. The available data suggest that negative attitudes to the law and to law enforcement have persisted regardless of grand political punitive and lenient turns. Analysis of two surveys conducted in 2011 and 2014 across the change of government in 2012 and relaxation of zero tolerance show that punitiveness itself appears to have little effect on public attitudes. There was no ‘mental revolution’ towards the law under zero tolerance; rapid liberalisation of punishment in the form of mass amnesty similarly failed to produce one.

Instead, we have argued that the quality of individual-level interactions with criminal justice agents are more important in impacting on feelings of obligations towards law-following as a civic duty. In this sense, the outcome of a criminal trial is not as important for attitudes to law as the procedure of that trial. Interactions between citizens and criminal justice actors in the Georgian case are perceived extremely negatively. These perceptions emerged from practices that followed opaque, partisan and unjust procedures such as the use of duress and violence in detention, murky processes of plea-bargaining, and mandatory custodial sentencing carried out by politically subordinate judges.

These findings relate strongly to broader criminological discussions in vastly different contexts. Pratt (2008) established that in New Zealand very popular punitiveness required continuing engagement with legitimacy-building. As in Georgia, scandal in the execution of punishment in New Zealand quickly turned punitiveness unpopular. Highlighting a connection that is highly pertinent to Georgia, the procedural justice literature provides examples from around the world of how attitudes to law depend on procedural fairness in criminal justice systems (Tyler 1990; Tankebe 2008; Jackson *et al.* 2012a). In both the making and application of the law, visible and tangible procedural justice may be one remedy to legal nihilism. The relationship between direct experience of criminal justice and legal nihilism in Georgia and the wider post-Soviet region should be more fully explored with survey and interview questions expressly intended to test constitutive elements of procedural justice such as transparency, fairness and neutrality as well as more pointed questions concerning attitudes to the law.

The Georgian case shows that punitive turns or politically-driven mass amnesties are unlikely to solve the problem of legal nihilism in the post-Soviet region. On the one hand, amnesties are often used as legitimating moves by unpopular or increasingly authoritarian regimes. On the other, a ‘tough on crime’ approach can also embolden political leaders. Despite recent decreases, the post-Soviet region maintains some of the highest prison populations *per capita* in the world. In the Soviet period, the

historical use of the prison to stimulate economic development and stymy social problems provides a model that can be tempting to return to, albeit under different modernising and Westernising slogans such as zero tolerance. The case study of Georgia reveals that punitiveness is not a simple solution to the problems of social disorder and legal nihilism. Nor is it the most appropriate way to signal the supremacy of the law to society through strict non-discretionary application of tough criminal sanctions. Equally, liberalisation under conditions of mass amnesty without due attention to procedure is more likely to entrench, or even proliferate, negative attitudes to the law than it is to ameliorate them.

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